

JK

3882

A4

1851

A  
A  
0  
0  
0  
5  
5  
6  
1  
3  
7  
8



UC SOUTHERN REGIONAL LIBRARY FACILITY

Chambers

Speech of Judge Chambers,  
on the Judicial Tenure, in  
the Maryland Convention,  
April, 1851



THE LIBRARY  
OF  
THE UNIVERSITY  
OF CALIFORNIA  
LOS ANGELES

*W. F. Fitch*  
S P E E C H

OF

Judge Chambers

ON THE

JUDICIAL TENURE,

IN THE

MARYLAND CONVENTION,

APRIL, 1851.

---

BALTIMORE:  
PRINTED BY JOHN MURPHY & CO.

PATENT ROTARY PRINTING MACHINE,  
No. 178 MARKET STREET.

1851.

Digitized by the Internet Archive  
in 2008 with funding from  
Microsoft Corporation

*Chambers, Judge of the Court*  
(1)

S P E E C H

OF

JUDGE CHAMBERS,

ON THE

JUDICIAL TENURE,

IN THE

MARYLAND CONVENTION,

APRIL, 1851.

---

BALTIMORE:  
PRINTED BY JOHN MURPHY & CO.  
PATENT ROTARY PRINTING MACHINE,  
No. 178 MARKET STREET.  
1851.



## SPEECH OF JUDGE CHAMBERS.

---

JUDGE CHAMBERS, after alluding to various statements made by Mr. BOWIE, and several other gentlemen, in reference to the supposed state of public opinion on the subject of the Judiciary, in different parts of the State, proceeded to say:—

MR. PRESIDENT:—My sole purpose, in reviewing those allegations, is to show, that the argument of the important question, upon which we are called to act, should be based upon other grounds than such statements of opinion—that they, in fact, prove nothing. The gentleman, indeed, after alluding to them, admits this; and properly enough says, we ought to give tone to popular sentiment. We are here, not as the mere creatures of a particular party or class of men, to be driven against our convictions, by a supposed current of public sentiment running, in this direction, or in that. We are placed here, to perform high and solemn duties—duties which are to affect the interests, the security, the well-being of society, in all respects, and for all time. In discharging these duties, the most sacred obligations demand, that we exercise our grave and deliberate judgments. The responsibility we owe to the community cannot be met by adopting a course approved by others; if it be not commended to our own judgments, by a conviction of its propriety.

My object then, in alluding to the remarks, I have noticed, is to express my humble opinion, that such considerations ought not to disturb the operation of our minds, in coming to conclusions, upon this subject. There are, in my view, far higher, greater, and more important considerations. According to my judgment, there has not been, there is not, nor will there be, any question before this body, which can in any degree, be compared with this, in the magnitude, in the extent, in the duration of its results and consequences, for good or for evil. I wish I could flatter myself, with



the expectation of drawing the attention of the House, to the views, I would present. I am sensible, that very strong impressions have been indulged by many; and equally sensible, that these deep-seated and long indulged opinions are hardly to be changed. Still I feel it my duty to give the result of my best and most anxious reflections.

In the discussion of this subject, I am quite willing to follow the lead of the gentleman, who has opened the debate; and commence with the original, elementary, universally acknowledged principle, recognized by the Declaration of Rights, as the doctrine of our Fathers, and worthy of acceptance, for all time, as the foundation of a republican Creed. The first Article of that Instrument declares, and the whole Constitution assumes, "that all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole." The second declares, that the people ought to have the sole and exclusive right of "regulating" and controlling the government. No man in this State, no one in this body, or out of it, will avow, as his own, or propose to another, any other political Creed. All, every where, admit the sovereign power of the people, to control their own government. Now what is the government, which the people can thus regulate? What are its objects—what its designs? The error of the gentleman's argument—a very common error—is, that the Government is designed, solely to protect the rights of the majority of the people, at any given period. That is not the spirit of our Declaration of Rights; nor is it consistent with the true theory of government. The doctrine of the Declaration—and the sound doctrine—is, that Government is designed for the good of the "WHOLE," not of a "majority." Government is a system of *restraints*, not of *indulgences*. Man, without its restraints, is thrown for protection upon his own strength; with no arbiter of his rights, but his own will, and his own passions; and no means to enforce them, but violence. Of course, in proportion to his physical ability, there is peril to the rights of those, who are unable to protect themselves. The prejudices and passions of men, excited, and operated upon, by motives of interest, ever have, ever will, and necessarily must, occasion conflicting opinions, with regard to their rights and claims. Without government, these conflicts must be determined by force; there is no other appeal. The object of government, is to substitute, for this force, a system of rules or laws, by which all such conflicts may be determined; to establish an authority,



before which a fair investigation can be had ; and by which, means are devised to give effect to the decisions which shall be made, according to these rules ; founded, as they profess to be, upon great principles of Truth, and Justice. The peculiar objects of the protection and care of government, are those, therefore, who, without it, would be exposed to wrong, and violence. The *strong* man armed, needs no aid. He can determine, for himself, his own rights ; he can defend, and enforce them. It is to the *feeble*, to the *oppressed*, that government is necessary. It is the conviction of this necessity, which causes men to associate, to form societies for mutual protection, and to establish settled governments. Majorities are strong : they are able to redress their supposed wrongs, and enforce what they consider their rights. The *restraints* of government are felt by them, and required to *control* them. The rules of government—rules, which protect the rights of all—are required for the protection *especially* of the humble, the obscure, and the impotent—of those, in other words, who constitute the minority of a community.

Another view, which has been presented by the gentleman, of the doctrine of our Declaration of Rights, has no foundation in truth. The idea is, that the people—meaning thereby, a numerical majority—have the right to control the government, by becoming the actual agents in its administration, *without* the intervention of officers, agents, or trustees, by and through whom, their delegated powers are to be exercised.

If a community of men choose to form such a government, one, by the terms of which, the whole mass is to be assembled, on every occasion, for the exercise of the functions of government, and in such mass meetings, and such alone, to decide upon every question which may arise ; doubtless, they have the *power* to do it. But what I maintain, is this:—I maintain, that such is not the spirit nor the letter of our system ; neither countenanced by the Declaration of Rights, nor by the Constitution ; nor was it thought of, by those, who constructed these noble monuments of political wisdom ; nor indeed by any one since their day.

If the imputed and admitted sovereignty of the people is to be vindicated, in such a case as the one before us, (the selection of a judicial department) *only* by taking into their own hands (the hands of a majority) the immediate and direct appointment of that department ;—if (as is alleged) it be a deprivation, in any degree, of the rights of that sovereignty, to delegate the power of selection, to agents appointed for that purpose ;—why is not this sov-

ereignty assailed, and impaired, by delegating to *agents* the power to perform any *other* duty, which the people themselves can do when assembled *in mass*? The direct and legitimate result of such a theory is, to require a dissolution of all society into an absolute, unqualified, unmixed democracy, such as can exist only in a community composed of some few families of men. If such a doctrine be at all tenable; then, in short, the people are not to elect a Judge. No, Sir, they—that is, a *majority of the people*—must act, as Judge. If the people's sovereignty is made to consist, *not* in organizing and forming their own government, distributing their powers between the different departments required for its administration; if to delegate power to agents, and officers, whether that power be to make *appointments* of other agents, or to perform *any other* duty; if this be to abridge the rightful power of the people—*then* the delegation of the power to judge and decide upon questions, which constantly occupy the Courts, and form the subjects of their ordinary jurisdiction, is equally—*equally*—an infringement of the people's rights. Yes, Sir. And then also are we here, usurping the just rights of the people. For we too are delegated by the people to perform at least, in part, a duty very much more appropriately within the sphere of action suited to the *mass* of a community, than the appointment of a judicial officer, or the exercise of judicial functions. Such a doctrine would impeach every act and measure of the government not only of Maryland, but of every other State in this Union; yes, Sir, of every civilized government, that has ever existed! In all, it has been, and ever will be, found necessary to organize departments; and to vest them with appropriate administrative powers; executive, legislative, and judicial. The American Doctrine is, not only that the sovereign power of the people is adequate to direct—“*regulate*”—control this distribution of power; not only that the sovereignty of the people is the fountain of all power;—but that the people have “the *sole and exclusive* right of regulating it,”—according to the letter of our well expressed Bill of Rights. It is the “*government*,” they are to “*regulate*,” it is *not* for them to *execute*, (*in mass*,) the duties and offices created *by* the government. Government is the compact, or system agreed upon, or (if you prefer the term) *devised* by men associated in Civil Societies; which, in a country blessed like ours, with a written Constitution, prescribes certain organic laws, or rules, as fundamental articles of association; and provides the machinery necessary to execute, and

enforce these organic laws, and such others, as may be found essential. The machinery, without which an administration of these laws would not be possible, consists of the various departments, and their incidental details. The organization must be complete; the machinery must be of a character to operate effectually. When it is found defective, the sovereign power—the people—may re-model, may again organize, again “regulate” the “government;” and having done so, again leave it to be worked out, in all its completeness, by the administrative branches constructed, for that purpose, by their agents and officers. To require the sovereign power—the people *in mass*—to perform these duties of administration, would dispense with the necessity of government altogether. If such a thing were indeed practicable, all Constitutions, all Laws, all formal Governments could no longer exist. If we suppose their existence possible, they would at least be *useless*!

The sovereign power of the people would be embodied, whenever action was to be had, and neither Constitution nor law could resist or oppose their sovereign will! *That* will would be Constitution and law *above* all restraint; and include, in itself, legislative, executive, and judicial authority. Sir, is this theory attractive, which yields results so full of mischief? But fortunately, it is as impracticable, as it is mischievous. The government of the United States originates from the supreme sovereign power of the people of the United States. They are as supreme and sovereign in relation to that government as the people of Maryland are in relation to our State government. There is as much moral and political propriety in respecting their rights, as there is in respecting the rights of the people of Maryland. If it be a gross violation of rights to delegate powers of government in the one case, it is equally so in the other. And now, Sir, fancy such a thing, as an attempt, on the part of the good people of this great Nation of almost boundless extent, reaching from the borders of China to the Gulf of St. Lawrence—fancy this mass of human beings scattered over this extended area, claiming to exercise, *in person*, those functions of administration which they insist are a portion of their just prerogative—claiming, in the language of the gentleman, “*a restoration*” of their rights! “*a restoration!*” Why, Sir, when have the people ever exercised such rights? Never—never! The claim now preferred is a novelty, and one of late date too. How did our Fathers understand it? I have attempted to explain what our Bill of Rights declares, what

our Maryland Fathers designed; but it will require no elucidation, to show what was the understanding of the Sages, who declared the Independence of the Nation, as well as the Rights of the people; and who subsequently poured out their treasure and their blood in defence of those Rights. In the very first clause enumerating the causes of separation from the British government, and setting forth what are inalienable Rights, it is declared, that "*to secure those rights, governments are instituted, deriving their just powers from the consent of the governed;*" that is, *the people*;—"and whenever any form of government becomes destructive of these ends, it is the right of the people to abolish it and"—to do what, Sir?—administer it, themselves? Not at all. What they wished to do, in such case, was "*to institute a new government*"—"organizing its power, in such form, as to them shall seem most likely to effect their safety and happiness"—"to provide new guards for their future security." Here, Sir, is the true theory. Government is an "*Institution*." The right of the people—their *inalienable right*—is to "*organize*" it: *not* to administer it. Pursuant to this theory, the whole government of the United States was organized; and its Constitution is nothing but a delegation of authority to officers, and agents, to administer it; and amongst other means, to nominate, and appoint other officers and agents, to aid in its administration.

And now, Sir, I must guard against the attempt to misapply, or the danger of misapprehending what I have said. I do not at all mean to question the power, or the right of the people to provide, by the Constitution, for the election of Judges. Quite the reverse. The very object of a written Constitution is to parcel out those portions of the sovereign power, which the people find it necessary to delegate for good government. They may rightfully determine what shall be done; how, and by whom it may be done. They may determine, that a Judge, or any other officer, may be elected by all the voters in the State, by voters in particular districts, by the Executive, by the Legislature, or by a college of electors. No doubt of this. They may do so, by providing for the selection of all officers in one way; or by directing that some of them be selected in one way, and some in another. But what I maintain is, they no more divest themselves of any inalienable right, by prescribing one mode; than they do, by prescribing any other. If the sovereign power authorizes the executive to appoint a Judge, or any other officer; the executive acts, in obedience to the lawful mandate of the sovereign power. If the

Constitution directs the Judge or other officer to be created by the votes of the people of the State, or any portion of it; then the election is in obedience to a mandate equally lawful, and emanating from the same sovereign power. The real question, then, to be considered, and the only one, is a question, not of "*right*," but of "*expediency*." What is the method of proceeding most likely to attain the object we have in view? This is the subject for our consideration; and we are not to be enlightened, as to our conclusions, on this point, by the notion of a "restoration" to the people, of any rights, of which they have been deprived. *Restoration* is a relative term. It imports the return of an object to the person, from whom it has been taken. Where, and when, did the people exercise this inalienable right? Where, when, and by whom, was it taken away? The Constitution of the United States—the Mandate of the people of the United States—vests the appointment of the Judiciary, in the President and Senate. Our State Constitution, from its origin, has vested this power of appointment, in the Executive. There is no aggression upon the rights of the people. And any argument, which professes to show any invasion of such rights, must be without the shadow of a foundation.

The Judiciary is a branch, a necessary and important branch of government. It is,—at least it is intended to be,—a most available agent, in effecting the ends of government. What the end of government is, we have already heard from the highest authority:—"to secure our rights, amongst which are life, liberty, and the pursuit of happiness:"—to protect every man who needs protection, in the enjoyment of his rights of person, his rights of property and of reputation. It is not to protect a *majority* against a *minority* of the community; but for the protection of *each* individual citizen against a violation of his rights by any other individual, or number of individuals. It does not provide a remedy for such as suffer no wrong; or relief for those, who have sustained no injury. On the contrary, the redress, it promises, is only to him, whose rights have been invaded; all its protection is promised to him, who may become the victim of force or fraud. Those who are peculiarly exposed, whether by reason of infirmity of character, physical or moral; from the want of pecuniary means, or popular favor; or from any other cause; aye, even from deformity or depravity of moral principle—all, who are especially obnoxious to the excited passions or prejudices of others—are the objects of protection. All, on the other hand, who would



offend against these, (for the vilest even, still have rights,) are the subjects, *not* of its protecting, *but* of its *restraining* power. All, who would offend must be restrained; or the very first and vital end of government will fail. Whether they be powerful, abounding in wealth and influence; or elevated in political power, and place; whether acting individually, or in masses; all, who offend, must be alike amenable to the laws. Now, Sir, it is a fact, as well known, in the history of human beings, as the fact, that when respiration ceases, death must be the consequence—a fact of universal observation—that the possession of power, without some adequate restraint, begets a disposition to abuse it. No body can doubt that. It has been a part of the infirmity of our being, since the fall of Adam; and doubtless will be so, to the end of time. The object of the law, which is the mandate of government, is to restrain that propensity. The object of *all* law is, to guard and secure every citizen, however humble, in the enjoyment of all the privileges guaranteed to him. Unfortunately, however, the law, though good and wise, cannot execute itself. If a man suffer actual injury in his person, or in his property; it is of small account, to tell him there is an act of Assembly on the statute book, which says you shall have ample redress. If he cannot go beyond the reading of the statute, if no mode of enforcing his claim to redress be provided; he will not be the better, for the statute. There must of course be some agency, some machinery, to carry the law into effect. You must then have wholesome laws, and you must have courts and Judges to afford the means of executing them, and of bringing them within the reach of those for whose protection they are made. This proposition will be admitted on all hands. If there be one of them disputable, I am not aware of it. We must have a government of force, to be administered by a military arm, or a government of laws; if the latter, we must have Judges. Of course, the Judge should execute the duties of his station, so as to accomplish the great end of his being. He should apply the law, according to the purposes, for which it was enacted; to the protection of the weak against the strong; to the punishment and restraint of those who would commit wrong; and to the redress and security of those, who are exposed to it.

Hence arises the great question for our solution, *What sort of Judge, in this state of things, is most likely to perform the functions of the office effectively and faithfully?* What are the elements necessary, in the character of an officer, who is thus to be the representative, and exponent of the law? My answer is, that

the very first and indispensable constituent, in the character of such a man is a consciousness of perfect independence ; a freedom from all motive to do wrong ; an exemption from all fear to do right. This truth, to my mind, results from the very nature of the fact, that he is to perform an odious duty ; odious to an influential opposition, in direct violation of its strongest feelings and dearest interests. In any other matter, if you desired a man to perform a given duty ; you would certainly, as far as possible, remove from him all motive to neglect or abuse his trust ; especially would you guard against his being made to suffer for its faithful discharge ; you would, if possible, so arrange matters, as that advantage, and not loss, should be the consequence of his fidelity. Any other course would be as contrary to the common usage of prudent men ; as it is to the philosophy of our nature. Man is a creature of motive. You might as soon expect an engine of the most perfect mechanical construction, to perform its intended operations, *without* the guiding and controlling hand of the engineer ; as expect the mind of a human being to give existence to words or actions, *without* some motive to act upon it. Experience, in every department of human life, demonstrates, that such is the character of every sane mind, and ever *has* been. It is also true that the very instincts of our nature prompt us to regard, with peculiar interest, considerations of personal advantage, or injury. Man, in his best condition, is to some extent *selfish*,—wisely, perhaps—nay, perhaps, necessarily—but *certainly* such. If his existence is in peril, he is instinctively impelled to avoid the danger ; and he will obey the impulse, unless it be counteracted by some other of a higher and more imperative character. It is the same, in regard to evils of a nature less fatal, but in their degree quite as unwelcome. It may be the impurity of our *animal* nature ; it may be disowned by our purer intellectual being. We certainly share it, in common with the brute creation. The horse you ride, will be shy of the ditch, which looks too wide for him to leap ; until the spur overcomes the dread, and urges him forward to his best attempt. Sir, the man and the brute do not differ, in that particular.

Let us then, Mr. President, consider what are the motives (and what their force) which are likely to operate upon the mind, and regulate the action of the Judge, we are about to create ? I will not treat of him, as an abstraction ; but as a Judge here, in Maryland, in the nineteenth century. This is the time, here is the place,—and the theatre,—for the exercise of his duties. We need



not indulge in general speculations and theories, based upon an assumed perfection of individual character, and an elevated condition of society; or upon any other assumption. We have to deal with a practical question; and I hold the propriety of acting, with an eye to the *actual* condition, in which we find men and matters. We must consult our judgments, enlightened by our experience and observation; and answer the question, which I have so often said should ever be the object of our solicitude—" *What will practically produce the greatest good to the greatest number?*" The Judge then will be but a man, a better man it is to be hoped, than many others; but still subject to the universal law of his being, influenced by motives, perhaps of a higher order; but nevertheless yielding to those, which are most influential, in human conduct. Let us then inquire, what are the motives which are likely to be presented to his mind. Doubtless in this enlightened age, when public sentiment is to some extent controlled and instructed by the precepts of a pure Religion and a sound morality, there is no man, who would not obey his sense of propriety, in the absence of any inducement to do wrong. He would therefore do right (that is to say, what he honestly thought right) if no temptation existed. Of course, I do not speak of one, who by indulgence in a dissolute, vicious course of life, has demoralized his feelings; and blinded, or blotted out his moral sense. Such a man could not be considered, as an index of the character of the officer; and any other would perform his duty, in the absence of any strong motive, to induce a neglect or violation of it. There is nothing in the character of his duties to bias, or warp an honest mind. He has no patronage, to whet the avarice or excite the ambition of friends or relatives. He confers no office. Candidates for such honors must look elsewhere. His duty is only to act judicially, in coercing an officer to the performance of his duty; or in restraining him, in any attempt to exercise it oppressively. He acquires no power for himself. His business is, to determine when others abuse theirs. He acquires no riches, by the exercise of his functions. He decides upon the contested rights of others; but whether his judgment shall be in favor of A or of B, no matter how large may be the amount involved, not one farthing of it is to go, in any event, into his own pocket. If a case occurs, in his Court, in which his own interests are involved directly or remotely; he must retire from the Bench; and leave its decision to an impartial tribunal, before which the judge is merged in the suitor. He is to decide exclusively on the rights of *others*. He

does this, by no voluntary act on his part. He never goes in search of an opportunity to exercise his authority; he asks no man to come before him for judgment. But, while he cannot do this, if he would; he is as much the slave of necessity, on the other hand. He cannot, if he would, avoid the exercise of his duties, whenever they are put in requisition. He is bound, whenever offences are charged, or injuries alleged, to interpose his jurisdiction; and—often, very, very often under the most painful circumstances—to hear, and decide upon the fiercest, bitterest contests. There he sits, however. The more tender feelings of his heart may excite his anxiety; or his refined moral sense may feel a disgust. But there he must sit, calm and unmoved, with no license to indulge either; but compelled to consult the stern dictates of his judgment and knowledge. To these, every man may appeal, who chooses to think himself injured; whether he be so, in fact, or not. However unreasonable his complaint; whomsoever it may affect; the Judge must listen; he must examine, and decide it. Any one may appeal to him; but as the exponent of the law, he must give the same response to all. The law is made for all, who come within its provisions; and all are entitled to its equal, impartial, and prompt administration. It prescribes the line of his march; and his feelings, his reputation, and his peace of conscience, will not allow him to stagger, to halt, or to turn aside, merely from a desire to do wrong. *Such then is the condition of the Judge, if temptations, inducements to do wrong, be kept out of the way. And that they should be, as far as practicable, I now assume as an admitted proposition.* To enable us to guard against them, we must understand what they are likely to be?—those occasions, which disturb the regular current of impartial justice—whence are they likely to arise? Now, to all controversies, there are at least two parties. It may, it often does so happen, that one of them is rich, powerful, and influential; the other poor and despised. The one has the distribution of patronage, or favor, which enables him to control, if not the opinion, at least the voice of a large circle of expectants, or dependants; the other is without influence, or friends. Here is a case that appeals to the infirmities of the Judge. Yet the rules of law are the same precisely, as if the character of the parties were exactly reversed, or exactly alike; and therefore its even current should not, in any respect, be disturbed. The humble man has the law, on his side; the powerful man has misconceived his rights, or has intentionally encroached upon

those of his poor neighbor; or the point is a difficult or a nice one. But, in any event, a decision in favor of the opulent, popular litigant, will ensure commendation and favor for the Judge; while a decision against him, will excite the censure and condemnation, not only of the great man himself, but also of all those who speak and act as he directs. The despised litigant, on the other hand, can neither accelerate nor retard the progress of the Judge towards reputation, honor, and social enjoyment. Is there not, then, an obvious temptation here? *I do not put the case of a Judge tempted to an act of wilful corruption.* It is not necessary for my argument. I take the case of a Judge just as honest as those we shall find, in the class, from which we must select. Yet he bears about him the infirmities of our nature; its weaknesses; its follies, if you please. He, like all men, has his prejudices and his partialities; he, like them, must to some extent, find his judgment under the dominion of his passions, of his appetites, or of his self-regard. Thus tempted from the line of his duty, he must have some counteracting influence, to fall back upon. What is it and how is it to be supplied? Sir, human invention may be scanned in vain; imagination's widest, wildest range may be traversed, to find any other effective means to accomplish the necessary object—one and one only can be found—a conscious independence of the Judge. He must have this; and having it, he has all that is necessary to quiet his apprehensions; to subdue his prejudices and partialities; and to leave him in the indulgence and expression of opinions formed under that high sense of the responsibility, which he owes to Him who gave him his being. This is the rock of his safety. On this, he looks with no fearful concern for his security; although the waves dash furiously at its base. He knows, and feels, they cannot harm him; and he treads, with as firm a step, as if the sea before him were calm and unruffled.

Now let us consider the opposite hypothesis; let us so arrange matters, as that the influence of the man of wealth and power shall be brought to bear directly upon the most important items in the comfort or convenience of the Judge; in fine, upon his very official existence; and then how may we expect the arrangement practically to work? I do not mean to say, there are not men proof against all such opposing causes; men who would jeopard their lives, in the strict performance of duty; and become Martyrs to their principles. We have had Martyrs—men who have rushed to the stake, to vindicate the truth of their opinions. Religion can make men Martyrs. We have had Warriors and Heroes, to take

the advance in a forlorn hope, and with fearful and countless odds against them, to plunge into danger and death, to rescue a nation, or an army. Why are Martyrs at the stake the objects of our veneration? Why are Warriors and Heroes, who have poured out their blood on the battle-field, celebrated in history, and cherished with admiration? Sir, it is because they are *rare*. If every man was a Saint, or a Hero, the character would lose its charm. But, again, let us consider the wide difference, in the cases. The Saint on earth is sustained, and borne through his fiery ordeal, by the strong hope, that he is presently to be a Saint in Heaven; and to receive an ample reward for his sufferings here. The Hero knows, that he is to acquire perennial fame; while the habits of his life, his passions and feelings make him regard all things as unworthy even of comparison with so high an object. How is it with the poor Judge? He is assailed by the influential adversary, with charges of incompetency or misconduct. His destruction being the object, the means most effective will of course be resorted to. If his ability be well established, his purity must be attacked; if he has more character for integrity than for talent, then the latter must be defamed. Once get him into bad odor; and the business of thrusting him still lower and lower, will not be difficult for such agents. And what is the result to him? Honor and fame and immortality amongst men? No, Sir. Infamy, disgrace, oblivion, —these are his portion, when those who riot in the ruin of his character, have accomplished their ends. Few *can*, still fewer *will*, examine minutely into his history. He is a degraded judge; offensive to those who lead and control the sentiment of the community; charged with numerous delinquencies; and by that community, condemned. You first compel him to decide; and then for deciding conscientiously, you doom him to a hopeless degradation, robbed of his reputation, and probably thereby deprived of the means of future acquisition, either of character or property.

I am aware, Sir, of the attempt which some persons make to obviate these difficulties, which they cannot but feel and acknowledge; an attempt, by which, I believe they do actually deceive themselves. They say, they admit the necessity of having the Judge *independent*; and they wish to make him such. I was quite amused, the other day, to hear one of the gentlemen across the Hall, full of zeal, in what he regards a "reformation" of our judicial system; and repeating the phrase—"An *independent judge dependant upon the people!*" It shows the fact, at which I rejoice,

that there is a deep-seated conviction of the GREAT TRUTH, that a Judge should be independent,—even with those who have been inoculated with the virus of pseudo-reform,—of change in every thing. Sir, it is an inbred element in the constitution and character of the Saxon—this respect for law, and for the purity of its administration; and as essential to it, the independence of the minister of law. Now, Sir, paradoxical as it may seem to some, I propose to show, that there is at least as much reason for making the judge independent of the *people*, in this country; as there is, in England, for making him independent of the *crown*. It certainly is the boast of the English Constitution, that the Judges there are no longer tenants, at the will of the Crown. It was a brilliant achievement in favor of liberty—a great popular triumph. The measure was, to a very considerable degree, effected by the 13th William III; and it was completed by 1st George III, which was the first to enact that the commission should not expire with the demise of the king; and which also made his salary permanent. Every man, at all acquainted with the history of Jurisprudence, or indeed with political history, appreciates the inestimable blessings guaranteed to the citizen—to the humblest, the most persecuted citizen—by this independence of the Judge, under the British government. Yet I hope to satisfy those, who will listen, and will allow the argument to have its fair effect—that all the reasons which make it valuable and necessary there, apply with all their force; and some of them, with much greater force, to our condition here. Let us go back a little way into English history. Before the Independence of the Judiciary, the system was virtually a tyranny. And why? Because the rights of the individual citizen were held, at the will of the Sovereign, uncontrolled by fixed and known rules of law. That is the very definition of tyranny. It may exist in a monarchy, in an aristocracy, or in a democracy; but in either form, if the will of the sovereign power is not controlled by settled laws, which secure the rights of person and of property; the government is essentially and emphatically a tyrannical government. The sovereign, in England, was the king; and the king, without the control of law, was therefore the tyrant. I do not mean to say, that he constantly acted out the character. A man may have power, which he rarely or never exerts; but it is the amount of power, in the hands of the government—not the personal character and temper of the monarch—which constitutes the idea of tyranny. The King of England did not habitually exert his power; but



whenever his passions or his cupidity were excited, he did exert it. The government was ordinarily administered by the authority of acts of parliament, in the making of which, the people, through their representatives, participated. But as I have before said, these statutes of parliament could not execute themselves; the Courts and the Judges administered them; but the King was virtually the Judge. He might not have said to the Judge in words, but he made him understand sufficiently well, that in a particular case, in which his hatred or his avarice was enlisted, the judgment should be such as he desired; or he would provide another, who would feel no difficulty in gratifying him. Take, for an instance, the celebrated case of the Corporations, where an English monarch to gratify his cupidity, resolved upon their destruction, and made a tool of his Judge for the express purpose of effecting his object—yes, Sir, and as my friend near me (Mr. CRISFIELD) reminds me—*that* tool!—his Attorney General, who had prepared all the pleadings and arranged the matter, as the lawyer, and then took his seat on the bench, to consummate as Judge the act of lawless injustice! Here was a case of removal by the hand of power, for the faithful, firm adherence to duty. No such case can occur now. And why? Simply because the Judge now is independent; he was not so then. But he was independent, in one sense; and, in the sense intended by the class of persons to whom I have alluded. Nominally he was independent; and he was so, in fact, of every one, except the king. All the rules of law, and all the forms of law, were prescribed for his government, and these required him in the one case, to pass a fair and honest judgment, just as much as they did in the other. But what was the practical effect? Why you find, *the King had control of the law, because he had control of the man who administered the law*. In such a state of things, the government and the law cease to afford protection to the rights of the citizen; and it is precisely this want of certain effectual protection, which distinguishes tyranny from free government. *Liberty* is but the term, by which we designate our rights. It consists essentially in the enjoyment, the certain and undisturbed enjoyment of rights, personal, social, and political. Rights cannot practically exist, where there is a power to control them at will. We can have no certain enjoyment of privileges, civil or religious; if the sovereign power may protect them at pleasure. It is not important, whether through the forms of law or in defiance of the forms of law, this arbitrary or sovereign will exerts its power. The practical consequences are the same. It

is a lawless government; an arbitrary, a tyrannical government, the moment the regular course of law is disturbed; and the citizen is thrown upon the whim, the favor or even the sense of justice of the sovereign. This sovereign power, I repeat, may consist of *one*, or of *many*. It is not the number of individuals, who rule, that is to make it more or less a tyranny. It is the absence of restraint upon its will; it is the failure to ensure a just, regular, and impartial administration of the law, so as to redeem the promises and pledges, by which it guarantees to every individual in the community, from the highest to the lowest, and to all alike, the safe and certain enjoyment of all the rights and privileges, with which they are invested; it is the unwillingness, or inability to enforce engagements, to restrain vindictive passions, and violence whenever exerted against the weak, to secure property to its rightful owner when an attempt is made to wrest it from him by force or fraud—it is, I repeat, the failure, unwillingness, or inability, in these respects, which constitutes the defects of Government; and they follow—as logical sequences—making up the character and the curse of a Despotism.

But at every point we are met with the notion, that the people have all power, and ought therefore to have control over the Judiciary. Sir, if the people have power to do wrong, it is the very purpose of government to restrain its exercise; for the only object which men can propose to themselves, by entering into such an association as civil Society is, to secure to themselves the enjoyment of their rights, and protect themselves against wrong. Are the eternal and immutable laws of justice less imperative, upon men when assembled, *in large bodies*, than they are when acting *individually*? Masses are but individuals in combination; and the laws which enjoin the observance of justice, and prohibit violence, or the practice of fraud, are as obligatory in the one case as in the other. Like the Being, from whom they emanate, the Rules of truth and equity are the same to-day, yesterday, and forever. In them “is no variableness, neither shadow of turning.” To say, then, that it is the right of the people to control the judiciary, and this right ought to be exercised, is only to leave the question as we found it. The duty still remains, to decide how, in the exercise of this admitted right, can they control and organize the judiciary, to the best advantage of the community—the best advantage in fact of themselves—the people—the “*whole*” people—for whom all the benefits of government are designed. If, as I maintain, it be not only most useful, but



absolutely necessary to the attainment of the objects designed, that your Judges should be independent; then, according to the theory assumed by those who are so jealous of encroachment upon the people's rights, it is proper to use those rights in the organization and regulation of the government, so as best to secure the design. If amongst the powers of the people, were included the power to do wrong, or to cause others to do wrong either to themselves, or any portion of themselves, (a proposition which I deny;) still they ought not to desire to do it; nor should we, as their representatives, so exert the power. It is obvious, then, in any just view of the matter, that it is our duty to adopt such measures, as the faithful execution of the laws requires; and such as will secure to the people their rights of person, of property, and of reputation. These are the rights, which society and government are instituted to protect; and it is *suicidal*, to maintain for the people, or for the government, a right to destroy or disturb them. Men, whose moral feelings are depraved, require restraint, because they will otherwise, intentionally, commit injuries; and others under the influence of passion or prejudice may do the same. And knowing this, the government—the power of the people—should guard and protect those, who would otherwise be the victims of such persons. The latter are a part of the people; and government is as much designed for them, as for others; indeed, more so. Each portion of the whole has its respective and often divers interests; in other words, its wants. The mercantile interest may be greater or less than the agricultural; or those who are laborers may be fewer in number than those who are not; yet each has an undoubted claim to the care and protection which his interests require. And so it is with all portions; but it is emphatically the case with the feeble and the destitute, who have smaller means in every respect to protect themselves, and can look no where but to the law and its administrators for protection. Now, then, if all this be as I have stated, it is manifest that your laws must be free of access to all, equal to all, and certain for all. To have them administered with a halting, hesitating step; to let them bend one way for this man, another for that, can but encourage, and must sometimes sanction, the doings of the wicked or the passionate or prejudiced; while it will necessarily alarm and discourage, and often ruin, the victim. The consciousness of certain defeat or punishment, will generally restrain men from fraud or force; while a

chance of success or escape, will operate as a premium to hazard the experiment.

But can the Judges be expected to do their duty, when their very existence depends upon doing otherwise? You will not allow a Judge to act, when his near relative has an interest in his decision; but to decide when his own rights of person, property, or reputation are the subject of controversy, would shock every man's sense of propriety. Why is this? The answer is obvious. His partialities would bias his judgment, if his integrity were proof against temptation; and the reason is abundantly sufficient to justify the rule. But does not the same reason apply, with all its force, when his official existence, which may be his means of subsistence, when even more than this, when his reputation and fair character are, not (it is true) the subject of the controversy, in terms; but deeply involved as consequences resulting from the particular manner in which he may decide the case? If the value of one dollar of his property be at stake in the issue, he is disqualified, for assumed partiality; and yet, when consequences utterly ruinous to himself may grow out of the decision, you are asked to disregard their influence. Now, Sir, my proposition is, that he be placed in a condition to exempt him from these consequences, from all fear of them. Let him be defended against any such influence, and against all other influences, but that of a high and moral obligation, to do his duty faithfully, and firmly—yes, Sir, in one word, make him "*independent*." And the way to do this, is to make his tenure of office to depend, not on the frowns or the smiles of those upon whose rights he may pass judgment, but upon his faithfulness and firmness—*upon his "good behaviour."* This, Sir, is what the "rights of the people" require; this is what *all* the people ought to desire; and, I have no doubt, do desire. They ought to demand it, because the wants of those for whom Courts and Judges are provided demand it; because the pledge and promise of protection and security made them by the people, will otherwise be false and delusive. If it were only to those, who are suitors in your Courts that these pledges of protection are broken, it would be unpardonable. But to suppose that, is to commit a great error. The man, who fulfilling, in all things, his obligations as a peaceable, quiet citizen, has had the good fortune to escape collision with his neighbor; who has never had occasion to consult a lawyer, or invoke the interposition of the Court; who in all his life has never had a controversy—he, too, has a deep interest in this matter. Sir, it is the sure and certain administra-

tion of the law; it is the known definition of his rights; the moral certainty that they will be enforced by the Courts; it is this, that has saved his rights of property from aggression, his person from outrage, and his character from defamation. Let the restraints of the law be withdrawn; and the quiet and peaceful men will find others in the community, who only need encouragement to invade their rights. Yes, Sir, a withdrawal of restraint will make the latter offenders, if they are not such already. It is then due to all, that the law should be faithfully and fearlessly administered, and that, to this end, the Judge should be "*independent*." To what else can men look for safety? In a despotic government, the will of the monarch is enforced by the bayonet. That is a very simple mode, most assuredly, of administering what is there deemed justice. But such justice does not exactly comport with our republican notions; and we are not likely to have either a despot to decide the law in the same breath which creates it, or a military corps to enforce his edicts. We are thrown entirely upon the power of the law. There, and no where else, must every man apply for a remedy. If my neighbor attempt to take my property—if he abuses my person—if he villifies my character—I ascertain the law. It is fixed and settled. I can demand the aid of the Court. It is open to all. I claim the sentence of the Judge, in conformity with that fixed law, regardless of his prejudices or his partialities—of the favor or affection of my adversary, however influential.

Reverse the case: and what is the value of your law? What avails your Court? It admits the suitor within its halls, but it mocks his effort to obtain redress. Is it amongst the "rights of the people," thus to make a mockery of law and justice? Is this a right, which it is desirable to "restore" to them? Sir, I say again, the people have the *right*, in one sense of that term; they have the *power* to do it; they are sovereign. They may assemble in their majesty, and expressly say to their Judge:—"You have given a righteous judgment, a judgment consistent with the laws and with the rules of honesty and equity; but it is not consistent with our feelings, and therefore as we have the power, so we resolve to remove you from your seat to make way for one who will consult our wishes." They can do this, and the Judge, driven from his seat, has no redress. But is it therefore proper? is it therefore desirable to do it? or to do any thing, which will encourage the exercise of such a power? No, Sir; the innate sense of propriety common to all, would denounce

such a proceeding as iniquitous, in the highest degree; and in the more legitimate sense of the term I *deny* that the people have any such *right*. Now, Sir, what I maintain is, that when you make the Judge the puppet of the people, you virtually encourage and often will cause this iniquity; that there is no real security, but in the independence of the Judiciary. Sir, the word "*people*" is with us, a word of very large import—of flexible and indefinite import. It is said here, that the "*people are eternal and immortal*." They are certainly as immortal as the government. No doubt of that. But they have some other attributes, which the public speeches of those who flatter them, are not so apt to describe or descant upon. The abstract theory of the honesty and purity of the people is all very well, in political harangues intended to court their favor. But is it wise to regard those attributes alone, in framing a government and providing for the administration of law? We do not thus act, in regard to other matters; we make laws to punish vice, and all sorts of mischief; and we expect them to be enforced. Against whom, are they directed? Are not those, who are the objects of these criminal provisions, to be found amongst the "*people*?"—not the people to be sure in their aggregate, nor in their abstract character. The "*people*," in the sense in which we practically come in contact with them, means that portion of them, who have an immediate and direct interest, or agency, in a particular transaction. We must then have respect to the number, class, and character of the individuals, with whom we have to deal, in considering what is the object of the proposed provision in our Constitution; we must take things as they are, as we know them to be; we must stand on the platform, where the scene is to be enacted, and view it, in actual exhibition. Well, Sir, let us see how this proposed measure is practically to work. The people,—thereby meaning those who are thus alluded to in the expression, "*a Judge dependant upon the people*"—act, by their votes—the only mode, in which they can act, or are supposed to act. How are those votes obtained? Will it be pretended, much less will it be believed, that each man for himself, investigates the facts of the case; and with a full understanding of them, and of the obligations of the law, calmly decides upon the moral conduct of the Judge, and regulates his vote accordingly? Will any man say this? Sir, every man knows, that the decision will be the result of prejudice, or interest, of excited feelings and passions, and a thousand motives not, at all, likely to en-

lighten the judgment or inform the understanding. And then, whose votes are they? Are they the votes of the individuals who deposite their slips of paper in the ballot-box? Yes, Sir, in one sense they are: so far as the mechanical operation of placing them there is concerned, they are so; but the mind, the will, the end and object expressed by the ballot, are those of another. We all know this. We all know that one man often controls five, ten, twenty, aye, fifty votes. He does not *literally* put that number of ballots into the box; but does it virtually by the influence he exerts over those who do put them there. We know this to be the case every where; we see it here in this body. It is the necessary consequence of that very feeling of our nature, against which I would guard your Judges; it is the effect of that wealth, intelligence, activity, courtesy, and persevering energy, which give controlling influence to individuals, and enable them to advance or impede the interests of those around them. It results, in short, from the partial state of dependance upon others.

And, Sir, who are those men thus controlling the popular sentiment through the ballot-box? Not your easy, quiet, home-staying folks, who meddle with nobody's business; but men of exactly opposite character; men who actively participate in public affairs; who take part in all the neighborhood and county transactions, make themselves useful, or at least busy, by advising and counselling those around them, in their business affairs; who take the lead in giving tone to all questions of interest, and use every effort to impress their opinions upon others; either naturally excitable, or made so by participating in all the excitement within their reach; men of exactly that class, who are as apt as any other to be litigants themselves; or if not, almost certainly the warm advocates and partizans of those who are. Let us picture to our minds the case of such a man—an opulent, influential, popular leader, full of ardor in his opinions, and very ample means to induce others to adopt them—in the attitude of a claimant in court, against some unfortunate person who is the reverse in all respects; with a mean spirit and ill-contrived temper that make him the object of general dislike. Let these be antagonist parties. Now the mean man, whatever may be the infirmities of his character; however poor, and humble, and despised he may be—is as much entitled to a faithful administration of the law—of that law which knows neither rich nor poor, neither high nor low—of that Justice which is appropriately represented as blind—as the most powerful or most popular man in



the land. If one part even of his pittance be taken from him, or indignity and injury be inflicted upon his despised person; he has a claim to redress as certain, and as safe, in its application, as if he were a Governor in the chair of State, or the man whom the people most delighted to honor. Sir, in a case like this, the Judge is called upon to decide; and he cannot decline. How is a just and impartial decision to be ensured? Let us not be told, he is bound to do right. We are all bound to do right, but we all fail in some things; fallibility, a liability to do wrong, is the characteristic of our being; and by nothing are we more likely to be deceived, than by our fears and our hopes, our interests and our wants. Seeing this, we are bound to use all the means we have, to guard against the effect of temptation. What I desire to impress upon the mind of the Convention, is the fact, that we must by our provision *strengthen* on the one hand, or *weaken* on the other, the motive of the Judge. If we protect him against the influence of the powerful antagonist, we silence his *fears*; if we place him beyond the reach of favor, we disarm him of his *hopes*. If, on the contrary, we leave him in a condition which exposes him to the effects of that man's power and influence, for advantage or for loss, above all, for subsistence and reputation; you stimulate every motive which can disturb the honest and impartial action of his mind. You do this, by the force of all the circumstances acting directly on the hopes and fears of the officer; and you do it, to a further extent by increasing, to a higher degree, the ability to do mischief, on the part of the influential litigant. The man who knows that his efforts to destroy the official character and being of the Judge, will be utterly hopeless, does not make them with the same earnestness and zeal, as if he knew they would be effectual to accomplish his object.

But bad as may be the case arising from prejudices against the Judge; there is another still worse. Some man has encountered the bitter prejudice of a community, justly it may be, or otherwise. Such instances are familiar to us all. We have known cases, in which this feeling has been wrought up to such determined purpose, that the bolts and bars of the prison could not resist the determined attack of the crowd, resolved upon vengeance. We have heard of Lynch law, and every sort of law, which can designate a popular outbreak. We have witnessed enough to teach us that such popular fury sweeps every thing before it, as regardless of opposition from every element in the moral world, as the tempest in the natural. Yet popular prejudice

against an individual, does not forfeit his claim to the benefits of the law. The Judge may desire to avoid the interposition on his behalf, but is not at liberty as others are; he *must* act, and cannot disregard the appeal of the vilest or the most persecuted. His interposition may delay, and finally defeat, the purposes of the excited crowd, assemblage, or mob. If he opposes it, he of course offends it. Is he to yield? If so, the law is prostrated in the person of its minister; and an innocent man sacrificed. And now, Sir, what can you in such a case expect from your Judge "dependant upon the people?" Will he as fearlessly, as firmly resist this torrent, this avalanche of feeling on the part of those upon whose favor, he relies for his bread, his official being, and reputation, as if he knew they could not affect him in any of these respects? Nay—not as firmly—but will he confront and resist it at all? Is he independent in any sense, that enables him to do his duty, as we require him to do it, and as he ought to do it,—"*without fear, favor, or affection?*" He must be more than man to be altogether free from such influences. But, admitting the Judge will not "do right," it is still said, "the people will do right"—"there is no danger in trusting the people." I reply, Sir, that both history and philosophy contradict this. The people consist of individuals, each of whom is subject to the same passions, the same prejudices, the same motives of action. The mass, composed of such elements, must have the same character. My experience is, that the collection of men in masses, lessens materially, if it does not destroy, the sense of responsibility. It is a truth we have all been taught by observation, as well as by history. It must be so from the mere fact that each, to a certain degree, escapes from the influence of one very strong motive to do right; he does not stand out before the public as the object of their notice, but is protected to the extent of the combined credit of all the party.\* But let us go further. Men every where act alike, under like circumstances. Our people are like each other, and we are like other people, whenever the circumstances and conditions of being, the motives and influences are the same. Sir, I find from a newspaper received a day or two since, that the people of a large city in Pennsylvania, containing about 80,000 inhabitants, had elected as their Mayor a very unfit man, that he had been regularly tried before a Court and Jury, and convicted of riot, which is a gross crime; and when after this he harangued the people, they cheered him loudly and avowed their determination to elect him to Con-



gress. Now, they are just such people as we are, as intelligent, as patriotic and as submissive to law and order; as much so as we would be, if similarly excited. They labor under temporary mania; prejudice and passion cloud, if they do not blind, their judgment. And who, I ask, is free from those influences? Is there one who hears me who can say, he has not been the victim of excited passion? No, Sir, there never has been on earth, but one man; and He was more than a man. There never will be another.

Again:—it is said, that, heretofore the Judge has been appointed from political considerations; and I admit that this, or any other argument, which is intended to show the defects of the present system, or mode of appointment, is worthy of consideration. If that mode which the people, in the exercise of their proper sovereignty have prescribed, does not accomplish its object, it is a fair argument for a change. But it must be perfectly clear, that the objection applies merely to the *mode* of appointment; and that, as I have constantly maintained, is a secondary consideration. It does not touch the great and important question which I have endeavored to discuss, that of the *tenure*—the question which involves the essential element, in the character of the office—that is, the “*independence*” of the Judge. But while I admit the propriety of considering the defects of the existing system, I cannot omit—what must occur to every intelligent mind—the further propriety of inquiring how far the proposed remedy will meet the objection, and remove the evil? I do not know however the history of all the Judges. I do not know that Judge Hanson was a politician; or that Judge Chase was a politician. Every man, it is true, of any character and standing, will belong to one political family, or the other, when the whole country is divided into two great parties; and if that be a reason, why he should not be appointed to office, you will be obliged to select from a class of persons, who are below the ordinary grade of intellect. But let the objection, be applied to politicians in the broadest sense of the term—the question recurs—Will there be a greater probability of excluding such politicians, upon the gentleman’s plan of proceeding? If not, the objection proves nothing. It is to propose a dose of medicine, which will certainly add its sickening influence to the discomfort occasioned by the disease, and the result of which, after the sickness has gone off, is either the death of the patient, or at best, a condition certainly not improved. I confess, I have no taste for such practice.

April 18. Judge CHAMBERS resumed.

MR. PRESIDENT:

My chief effort has been to show, that an independent Judiciary is essential to the well-being of the government—meaning thereby the people of the State—and emphatically that portion of them, for whose benefit and protection, that branch of the government is designed. I incline to believe, from what I have heard from every quarter, since my remarks of yesterday, that this, as a general proposition, will not be denied. It is true, the gentleman from Prince George's pronounced it a British doctrine, not consonant to the genius of American institutions. From other parts of his remarks, however, I infer that his denunciation was directed, not against the principle of Judicial Independence, but against the "tenure during good behaviour." Mr. President, it is scarcely a sufficient reason for condemning a principle, to say, it is of English origin. Where did we obtain our notions of Civil Liberty, of the Rights of property, of person, and of conscience—nay, all the rights we claim? From whom did we derive our affection for the fundamentals of a Government of law, the *habeas corpus* and the Trial by Jury? Did not these and other principles, dear to us all, come from our Anglo-Saxon ancestors? They are as old, as American principles, as the American branch of the Anglo-Saxon family; and I trust, they will endure, so long as the race continues. Yes, Sir, it is an English doctrine—this doctrine of Judicial Independence—and by some of the best and wisest men here, and in every portion of the civilized world, it has been regarded as a glory to the nation. Allow me, Sir, to read from a distinguished author—"every inch an American,"—the view he entertains upon this subject. Yesterday I gave an instance of the practice, under the old system, by which the King made the law and its ministers bend to his will. Now hear what Judge Story says, has occurred, during the hundred and fifty years since the abolition of that system:—"Since the independence of the Judges has been secured by this *permanent* duration of office, the administration of justice has, with a single exception, flowed on in England, with an uninterrupted, and pure and unstained current. It is due to the enlightened tribunals of that nation to declare, that their learning, integrity and impartiality, have commanded the reverence and respect, as well of America, as of Europe." In a note to this strong commendation, the author gives the names of several distinguished writers, who fully concur with him.

Sir, I propose to show further, that this English doctrine, as the gentleman terms it, has been transplanted; has here found a more appropriate location, and has flourished with renewed vigor; and that it is more in harmony with republican Institutions, than with any other on the face of the globe. I yesterday ventured this assertion; and with the advantage of the recess, I have been able to procure some authority to sustain it. First, in order, and first in authority, I will quote the opinions of the wise and great and good men, who announced our separation from the parent country—a class of men, whose wisdom will not, I fear, be surpassed by that of any age we are to witness; whose patriotism, (if I could) I would, with all my heart, hope to see equalled; and whose sole motive and object was the good of the whole country. Among the causes of complaint, upon which they based their opposition to the British government; and upon which they urged an eternal separation, stands prominently this:—“*The king had made Judges dependant on his will alone, for the tenure of their offices, and the amount and payment of their salaries.*” Yes, Sir, it was, in part, to secure the fixed and settled tenure of the Judiciary, that the war of the Revolution was waged. But they did not stop at such a declaration, in their Bill of rights—the Declaration of Independence. They were as practically wise and thoughtful, as they were patriotic. They were as sensible of the necessity of providing a remedy useful, and efficient, as they were sagacious in discovering the defect. Hence, one of the most conspicuous elements, in the Constitution of the United States, is the perfect Independence of the Judiciary, firmly guaranteed by a permanent tenure. In the third Article, means are used to secure this necessary principle. It contains the genuine English doctrine, improved, transplanted, and incorporated with other cherished principles, which will last while freedom has a home. The language is as follows:—“*The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office.*” Sir, there is not, in the wide world, a written Constitution containing so noble and perfect a truth, as is implied—indeed, it may be said, *expressed*—in this language. It goes beyond the English system; and goes beyond ours in Maryland. There is no removal, by the address of any, or all the other departments of the government. Nothing but misconduct, a charge of misbehaviour in office, sustained by proof, will remove a Judge of the United States. And

how, Sir, was this received by men thoroughly imbued with that American spirit, that love of republican liberty, which forms the best security for our hopes? The *FEDERALIST*—not only one of the ablest publications, but decidedly the ablest of that day, coming, as it did, from the pen of Mr. Madison, and other patriots—considers this, as one of the brightest gems in the Constitution of the United States. (Judge Chambers here read, from the *Federalist*, several passages to the point.) The most distinguished American jurists, (he said,) have concurred in the opinion. Wilson, Tucker, Story, all, who have deeply and thoroughly investigated the subject, all concur, in regarding this principle, as the great sheet anchor, by which our national ship of state is secured. (He here read several of these authorities, and said:)—I would invoke, Mr. President, for these opinions, the most devoted attention. I do not claim it for the sake of my own argument, but because it is the written recorded counsel of men, who were ornaments of the age in which they lived—men of undoubted intelligence and wisdom, and of undoubted purity. Sir, I speak from no motive to obtain approbation from any quarter; I speak from a deep, a solemn, and abiding conviction, that I am addressing men about to perform a duty, the consequences of which will be felt for weal or for wo, through all time, by every portion of our community. If the question were merely to take one man from the bench, and put another in his place, it would be comparatively insignificant. But here the highest possible obligations teach us to regard ourselves, as the guardians of all the immense interests involved in this great subject. An experiment, which is tried to-day, and, if it fails, leaves us to-morrow to return to our condition, is a trifle. If it affected only our pecuniary interests, they might be repaired; if it operated, only upon matters of party dominion; it might be submitted to, for a time. But here is a step proposed, which can never be retraced; here are interests far beyond the temporary possession of political power, or wealth; interests dear to every human being in society, in every relation they bear to each other, and for all coming time. The rights at stake are the rights of person, the rights of property and of reputation. And pray, Sir, what other rights, *as citizens*, can we have? All we hold dear, is included. I disclaim, with disdain, all political influences. Upon other occasions I have felt them, nor have I disguised them; but on a great subject like this, affecting all portions of the State, party considerations sink into utter and absolute insignificance. Parties will rise and rule, and pass

away ; but the administration of law and justice, and the protection and security of all our rights, civil and social, should be perpetual. I hope every gentleman here will forget not only his political interests, but his political prejudices and antipathies, if he has indulged any. The poor, the injured, the oppressed, the helpless—the orphan—the desolate widow—all, who are objects of the care and concern of government,—all appeal to us, as the guardians of their interests ; all, who now or who may hereafter occupy a place in these classes, in the long line of generations yet to succeed us ; all call upon us to provide for their security. If you fail to provide for them, and to do it now ; the neglect can be repaired by no human power. They can look for it no where, but in the firm and unbending course of the law ; and, if now, by our action, that course be checked ; if the fountain be now polluted, or its stream disturbed ; no time, no power hereafter can restrain the erratic current, or purify its source.

We have seen the opinion of the sages who framed our admirable system of government for the United States. Let us now, for a moment, attend to the lesson taught us, by those distinguished men, who framed our own State institutions. Veneration and respect have universally been accorded to them. Their devotion to free principles of government was unbounded ; their intelligence unquestioned. Their work, and all we know of them, commend them to our highest regards. Above all, they lived at a period, and under circumstances, which led them to employ all their noble faculties, without any mixture of sectional, personal or party feelings, or interests. All were patriots ; all pursued one common object—the common good. Ambition, and the love of office, had not exerted their evil influence, upon their passions and prejudices, nor warped their judgments. All were governed by the high and holy sense of duty to the State. I am not to be told, Mr. President, of the progress of the age, the change in men and things since their day. It is most true, we have witnessed astonishing changes, such as our ancestors, even in '76, never thought of, in the wildest dreams of fancy. But, in what departments are those changes ? Surely, not in the eternal laws of truth and morals. These are co-existent with the Deity. They are eternal, as his throne. They came down to man, with the immortal spirit, which his Maker breathed into him, as his life. Progress may be made, in arts ; in science ; in the various applications of the great principles, which govern matter ; in the discovery of new principles, if you please, as well as in the modifica-



tion and application of such as are known ; and in all inventions, which adapt such principles to the use of our race. But the laws of moral truth and moral propriety are immutable. You may adapt the great principle and power of Steam to the propulsion of the car ; or you may adopt the still more wonderful, but subtle power of the electric fluid, in the transmission of thought. But the obligations of the moral law are the same amid all these vast changes. Consider, for a moment, Sir, how palpable this is. Because we now travel across the Atlantic in less than ten days, instead of occupying forty ; is it therefore less a violation of the moral law, to seize our neighbor's property or abuse his person ? These immutable laws are modified and applied to varying circumstances as they arise, and Infinite Wisdom has made them capable of adaptation to every condition that can occur. But they are the same moral truths by which all human action must be controlled ; the same now, as they were in 1776, and ever must be. The great truth which the Bill of Rights declares, is in these terms :—"The independency and uprightness of judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people." Mark this strong word, Sir—"essential." This was true in the time of William III ; equally true 1st George III ; true in 1776 ; is true now ; and ever will be true, just so long as justice is administered ; just so long as lust and pride, avarice and ambition, and other evil propensities afflict human beings and require restraint. Now, Sir, the next clause, in this sentence, has a volume of instruction. It shows, beyond all cavil, what these framers of our Constitution understood by this essential—"independence." Let me read :—"Wherefore the Chancellor and Judges ought to hold commissions during good behaviour." There is no mistaking this. Judges must be independent—that is assumed as the premises ; *wherefore* they must have a tenure, during good behaviour—this is the direct, the necessary conclusion ; and never was one more just. The Article, in the Constitution of the United States, received the vote of every member of the body, that framed it ; nor is there, in the history of the Convention of 1776, as far as I have been able to trace it, the least reason to believe, it was adopted in Maryland, with less unanimity.

Now, Mr. President, I wish to show that some, indeed, all our ablest jurists, have concurred in the opinion, that the peculiarities of our republican Institutions are precisely those, which most emphatically require a persevering adherence to this old,

and venerated truth. (Judge C. here read extracts to show the opinions of Professor Wilson, in his Lectures—Chancellor Kent, in his Commentaries—Mr. Rawle, in his Treatise on the Constitution—Judge Tucker—Judge Hopkinson—and Judge Story.) Indeed, Sir, (said Judge C.,) until lately, since a spirit of change has become so rife in our midst, there was no name high on the roll of fame, so far as I am informed—there was no one, who doubted on this subject, except Mr. Jefferson; and he was an exception, only in his later days. His Notes on Virginia speak a different language, and more in harmony with his cotemporaries, and associates. I do not mean to assert that the reasons for his change of opinion were of a personal character; but I may be permitted in this connexion, to relate an incident, as I received it from the lips of President John Quincy Adams. Every man knows the permanent influence upon his current of thought produced by a particular fact, made especially impressive by accompanying circumstances; like the traveller, in the Knickerbocker, who, passing through New Jersey, was annoyed, at some stopping-point, by a drunken democrat and a vicious dog; and who for ever thereafter held both dogs and democrats in utter abhorrence. Mr. Adams did not assert that the incident was the cause of Mr. Jefferson's change of opinion, nor do I. Every one may draw what inference he thinks justified by the facts, which are these:—When Judge Chase's impeachment was first determined upon, it was the intention of Mr. Jefferson to have him convicted; and, if this beginning was well received, to follow it up by impeaching others on the Bench. It so happened, that during that session of Congress, Mr. Randolph had acquired more popularity and power in the House of Representatives, than any man before or since. Many instances to prove this, could be given. Mr. Randolph had an ambition to fill the chair of Chief Magistrate; and to strengthen his pretensions, it was important to show that his influence and power were felt, in the Senate, as well as in the House. He accordingly had himself put in the very conspicuous position of chairman of the managers or committee of impeachment. Mr. Jefferson had very different views about the succession. He had determined, that Mr. Madison must be the man; but began to perceive the danger which might arise from the brilliant and successful career of Mr. Randolph. From that time, said Mr. Adams, Judge Chase's acquittal was resolved upon—Mr. Randolph's discomfiture and Mr. Madison's success followed; and Mr. Randolph never,



to the day of his death, forgave Mr. Jefferson, whose whole plan he perfectly understood. "And," said Mr. Adams, "if you will examine the votes, you will find amongst those for acquittal some of the warmest personal, as well as political friends of Mr. Jefferson; for instance, Giles of Virginia, Jackson of Georgia, and others." It was certainly late in life, when Mr. Jefferson changed his opinions. Mr. Justice Story, who was one of his warm friends and admirers, whom Mr. Jefferson appointed to office—one of the most useful acts of his life, by the way—in speaking of the hostility of Mr. Jefferson to the judicial department, stated, that he wrote on the subject "apparently with the feelings of a partizan, and under influences, which his best friends will most regret." With this one exception, we have the uniform sentiment of a host of wise, experienced and honest men, and patriots, testifying to the truth of the ancient creed; and assenting to the further truth, that of all conditions of human society, that of a free republican government like ours, is especially that condition, in which it operates with the best effect, and where it is in the highest sense essential. Our institutions require, that the judicial arm should be strong enough to resist the onslaught of factious and turbulent associations, or any pressure from popular movements, as well as the machinations of intriguing politicians and demagogues; and to control, within Constitutional bounds, the action of the legislative, and executive departments.

In speaking of popular feeling, a piece of instructive history occurs to my mind illustrative of the difficulty of ascertaining what this feeling is; and of the facility of mistake upon the subject. Allison, in his *History of Europe*, says, that of the one hundred thousand spectators who silently consented to the death of Louis XVI, there were not one hundred who would not, most willingly, have saved him from destruction. This illustrates the idea which I have endeavored to urge—that what is often regarded as popular opinion, is a factitious affair; the mere clamor of a few prominent, and mischievous individuals. I do not mean to say, that Louis XVI did not violate his duties; he may have deserved expulsion; so far as my argument is concerned, he may have deserved capital punishment; but what I say is, he was in fact murdered, and that the notion of submitting his case to trial and the verdict of a whole people, was a mockery of justice, and a false assumption of popular sentiment. Robespierre was taken, as the embodiment of public opinion; and

yet when Tallien, impelled by the knowledge that his own execution had been decreed in conclave, ventured in full convention to denounce that monster in human form, that personation of all that is fiendish; and to seize him as a traitor—what was the result? Why, Robespierre was hurried to the same guillotine, from which he had caused rivers of blood to flow; and beheaded amidst thundering shouts of applause, from the thousands whose homes had been made desolate, without the sympathy of one earthly being. Sir, nothing is more dangerous, than to assume readily what is the popular sentiment; and there is nothing, in the condition of this country, to make mistake, on this subject, impossible. The people of France, and especially of Paris, were in the possession of means not inferior to those of other nations, for the cultivation of their intellectual and moral as well as political capabilities. They considered themselves in advance of the rest of the world. I may be permitted to give, in proof of this, a conversation I had with a very distinguished man, who was an actor in the scenes of the French Revolution; a man, whose memory is, as it should be, and as I hope ever will be, very dear to every American; a man to whom, in his own country, the honor and distinction to which he was justly entitled were never rendered, only in consequence of the dread and jealousy of Bonaparte. On the memorable occasion of the visit of La Fayette to this country, some five and twenty years since, by the invitation of the Congress of the United States, it was the good fortune of my friend, who sits before me (Gen. HOWARD) and myself, to be the Committee appointed by our Legislature to attend upon him, during his visit to Annapolis as the guest of this State. In the conversation which occurred in the stage, on our return to Washington, allusion was made to the political schools in Germany, where, I supposed, many young men after receiving sound notions of free institutions, would inculcate them, to an extent greater perhaps than they had obtained in any other part of Europe. The old patriot answered with marked spirit and promptness:—"No, Sir, 'tis in France, that the large body of enlightened men best understand the true principles of rational, civil and political liberty, and there the first successful effort will be made to introduce a government, securing to men their proper rights." Yet, in France were exhibited the scenes we have reviewed. But, Sir, we need not go abroad to find instances of popular delusion. What do we witness at this moment—passing

around us—amongst our own fellow-citizens—on American soil—by American people? What are we deploring as an awful calamity? What makes us tremble for the very existence of our institutions and all the inestimable blessings involved in their perpetuity? Is it not the delusion, the excitement, the frenzy, the madness of our people? Not of this one, that, or the other, but of immense masses, whole communities, rushing with an impetuosity that seems to defy resistance, not only to their own destruction, but to the destruction of that stupendous fabric which has cost so much precious blood and so much anxious toil and care to construct and preserve? What is abolitionism doing, at this moment? Do we not know what has been passing in Boston, in Springfield, and in various other places, and what is still passing in the North? Are we justified in assuming that scenes of a like character, though doubtless from different motives, will never be enacted in Maryland? Are we more enlightened—or better educated—or more deeply versed in the science of government? Until fanaticism deranged those men, they had as just conceptions as we have, of political, moral, and religious obligations; the love of liberty, and the love of law, were as deeply inscribed upon their minds and hearts as upon ours; patriotism flourished and was cherished no where, more than in the old Bay State, and around Faneuil Hall; and yet, in despite of all, a phrenzied impulse has made havoc of every sense of duty, they owe to their Country, and its laws. Yes, Sir, they were true men and will be so again. This madness cannot last. No, Sir, no. We have not yet so sinned, as a nation, as to deserve the curse of ruin, the curse of disunion. It is an impeachment of the great attributes of mercy and of justice which belong to the Deity, to say or to think so. It is a condition, not of idiocy but of lunacy; and a lucid interval will recur, a long and lasting interval, I hope. But upon the theory of an “independent judge dependant upon the people”—how would it work in the interim? Fortunately for the Country, we have had a Sprague, a Woodbury, a Nelson, a Grier, and other such firm and faithful men, independent of all popular clamor; holding their “commissions during good behaviour;” who standing on the rock of real independence, have fearlessly opposed the storm. This you could never rationally expect from one, who depended, for his official life, and character, upon popular favor. Such a man would have trembled and quailed before the infuriated mob, as a captive slave before his master. Mr. President, while speaking of the influence of an excited multitude on the administration of

justice, on this holy day (Good Friday,) I cannot help thinking of a case which occurred more than 1800 years ago; and which the Church, of which I am a most unworthy member, the Episcopal Church, this day commemorates, with the highest solemnities. An illustrious victim of popular rage was brought before Pontius Pilate; who heard the proofs and pronounced him guiltless—faultless. “I find no fault in him,” said he; and washed his hands, in token, (poor refuge as it was,) of his freedom from the crime of murdering an innocent man. But, Sir the infuriated crowd would not forbear; and they were wont to be indulged. What signified the innocence of the meek, but august prisoner? Sir, that fiend-like cry went forth. “*Crucify him!*” “*crucify him!*” rent the air. “His blood be upon us and upon our children?” And all that was human of the Saviour of the world, was put to a shameful death. Mr. President, human passion will now and here disarm human judgment, just as it did in the days of Pontius Pilate, at the city of Jerusalem.

I am aware, Sir, that it is said the people are competent to elect other officers; and if so, why not to elect judges? Now, in the first place, my argument, as I have said, is not so much directed against any *particular mode* of appointment, as it is to prove the necessity of a *tenure* during good behaviour. It is this “essential” feature, which I regard as above all other considerations. But, Sir, there are ample reasons in my judgment to distinguish this case from that of the election of political officers. The latter are chosen expressly to represent the political opinions of those who elect them; to give their vote, as they would give theirs; to represent their opinions, wishes and feelings. They can require them to do all this; and, if they fail, they will, and do dismiss them; and elect others. Take an illustration—I want an agent to perform for me some portion of my current duties, which, in the aggregate, are too numerous to allow me to attend to minutely. I have several farms, and want an agent or overseer for each. I require him to consult my judgment; and to conform to it, in regard to the character of the crops he is to rear; the field he is to cultivate; and even the details of the duty he is to perform. If he fails, I institute no process of judicial inquiry; conduct no formal investigation. I put him away at the end of the year and get another. He does not represent my wishes, nor execute my plans. That is the sort of relation which a representative bears to his political constituency. Now take another case—As a member of a Board of Visitors, I want a Professor in the College. He

is to perform the duties appropriate to his station—say, to teach his pupils Latin and Greek, according to the most approved system; a duty which I could not perform myself; and of course the last thing I desire, is, to have him do what I would do, if I were myself present. If complaint be made of his failure, the matter must be investigated. I cannot forthwith consent to dismiss him, because this boy or that tells me he does not perform his duty. The pupils must be examined by competent persons, to determine their progress; and a thorough investigation only will enable me to decide upon his merits, or his qualifications to do that which I cannot do myself. If he were to ask me for instructions, I could not give them. I should say to him—“You have been employed for this duty precisely because you were supposed to know how it could best be done.” Now this is the relation in which the Judge stands to the people. The Judge is supposed to *know* the law; the people are known *not* to know it. He is to exercise *his* judgment, not *theirs*—to express his opinions, not theirs. Political officers are usually elected for a very short term, and in reference to particular, distinct, well understood questions. They have a certain line of duty, and everybody understands what it is. But it is not so in the case of the Judge; his position is perfectly the reverse, in all these particulars. Above all, it differs in one other most important respect. In a political officer, you look for a politician; you expect him to act for those who elected him, and if he never were a politician before, he will surely become such, by serving a while as the representative of the people. Just the reverse is it with the Judge. He must not act the politician; he must not know one party from another in the discharge of his duties; and if he had been ever so ardent a politician before, he is sure to cease to be such, in a very short time after he is placed upon the bench.

The objection that the Governor has usually selected politicians for the Bench, is entitled to little weight. Let us maintain, as I have already intimated, the right sort of tenure; and the objection falls to the ground. Experience proves this. We have been proud of such men as Marshall and Story—we are proud of the present Chief Justice Taney. These men will be regarded by all, as distinguished not only for profound legal learning, and for all the varied accomplishments and acquirements professional and intellectual, which would entitle them to the first rank amongst jurists; but for unblemished integrity, for unspotted purity, for every thing which can enter into the composition and character of a Judge.



Yet, Sir, these men, who at an earlier period of life, had been in the political arena; had mingled in the strifes and collisions of party differences; were appointed by those who were at the head of the political party to which they professed allegiance. Are they less useful to the country, on that account? Do their decisions evince an infection of political prejudice or partiality? No, Sir. And to a Judge, who is placed upon the bench during good behaviour, you will ever look in vain, for the evidence of such infection. Why should he yield himself an instrument of wrong and injustice; and soil his conscience, with a foul stain? He gains nothing by so doing—can gain nothing. He will scarcely commit wrong, for the mere sake of wrong. If so vile, as to act thus, he will be wicked enough to bring himself within the penalties of impeachment, and be dismissed and disgraced.

Mr. President, if in any thing I have said, there may be supposed by any, to have been a zeal in any degree arising from my personal connexion with the office in question; I beg to assure them, that such a suspicion does great injustice to my position. I have served in a high judicial station, for more than seventeen years, with what success or usefulness, I am the last of all, who are acquainted with my history, to pronounce. This I can say—it has been my purpose and desire to discharge the important trust confided to me, with fidelity and impartially, and to the best of my poor abilities. I am willing to abide the verdict of those, who shall come after me, for the correctness of my judicial life. For the honor, altogether unmerited, and the flattering confidence of my friends and the community, evinced by placing me in this and other elevated public stations, I owe a lasting debt of gratitude; a debt I can never repay. I have always been, and ever shall be, ready and willing to acknowledge it. But, as to a *mere* matter of pecuniary concern—so far as the account of *debtor-and-creditor* is involved—I deny that any balance is justly chargeable against me. I have returned to the State, in labor and service, such as I had contracted to render; the best I have been able to render; the full value of every dollar I received. I have passed annually most of my days, in tedious, laborious devotion to my duties; and for a long succession of nights, have kept my head from my pillow, at unseasonable hours, in severe mental effort, to enable me to do more usefully and faithfully my whole duty. A kind Providence has possessed me with a competency to afford all the comforts of life which my habits require; and with a better spirit than that which regards great wealth, as the end and object of human

desire, or the source of human happiness. The office is one of extreme labor and extreme responsibility. I have arrived at a period of life, when there is but one consideration to commend it to my acceptance. I have, from early life, been an active, working man. Of all things, I dread a life of indolence. I have seen, on more occasions than one, the disastrous effect of a sudden withdrawal from active labor, by men in advanced life, to enjoy, as they had hoped, a quiet old age. I have seen it produce discomfort, impotency, disease and premature death. To those around me yet in younger life, and with less experience, I venture a word of advice—*Never* cease to exert the faculties of mind or body which Providence has given you, until the decree of that same Providence shall deprive you of these faculties. They are talents given to us, to be usefully and actively employed; and, if buried, will rust and decay. But to a man able and willing to be employed, there are always avenues open; and there is nothing so attractive, in a seat on your Supreme Court bench, either as it is now organized, or will be, under any of the various provisions before us, as to make it the particular object of ambition. So far as concerns my associates, with whom I have acted so harmoniously, possessing, as they do, (I have no doubt,) and justly possessing, the confidence and respect of the community; and to whose elevated intelligence, purity, and devoted application, I can bear that testimony, which would be endorsed by all who have had the opportunity to appreciate their character—I have only to say, that whatever may be their feelings, or their wishes—and I do not profess to be informed—they are considerations not to be thought of, in a matter of such vast magnitude as this. In providing for the interests of a whole community, for all time, it is of comparatively small moment, to estimate the effect to be produced, upon the convenience of half a dozen individuals, or thrice that number. With regard to mere *party* considerations, I am urging a course, which, of necessity, for the present, and for a long, long time, must prevent the elevation of those with whom I have politically been associated, to any judicial station. This, too, is a minor consideration. One party may be put out, and another put in; but if the means are devised to secure good conduct from each, the State is safe, the rights of the citizen are safe. In a little time, your party men will cease to be such, if you appoint them with the proper tenure of office; and without this, you cannot have a good judge, from either party. With this fixed tenure,

his party expectations, and his party aspirations are at an end ; and with them, his party feelings. I am influenced, therefore, by no considerations of a personal, social, or political description ; but from a deep and solemn conviction, that this question should be determined, by infinitely higher and more enduring considerations. The step proposed to us, if once taken, can never be retraced, whatever may be the mischiefs it entails upon us. Revolutions never go back. We have lived happily and safely under our present system ; then why change it ? The dangers of a new system cannot be fully anticipated, obvious as some of them are ; why hazard them ? I have been in States, where this change has been made ; and I could tell of some things, which might produce effect ; but I will not, because I am unwilling to be personally unkind, or seem to be so. But I will say that the result of my experience is, that the judiciary has lost the respect of the community in the proportion, in which it has departed from this fixed tenure. The principle of respect for the law, in the character of the Anglo-Saxon, may carry us on well enough for a season, but this impetus will cease, after resistance from disturbing causes. It is like a locomotive. You may remove the motive power, and the car will run on for a while ; but the resistance from friction and other causes, will produce a continually decreasing speed until it comes to a stand still. Sir, it must be so ; these temporary appointees will lose their character. The loss of that respect, which is essential to their usefulness, will follow ; and their ability to be useful, will then soon be succeeded by a condition of things, in which they will be positively mischievous. It may not, nay I hope will not occur, Mr. President, in your day or mine ; but why should we gratuitously impose upon our children, and our posterity a yoke, which we cannot, and which I fear they never can, bear ?

Sir, I have now performed the duty, I had proposed, so far as my own views of this subject are concerned. In conclusion I propose to offer those of ONE, whose sound intellect, whose ripe judgment, whose great experience and profound wisdom, entitle his opinions to infinitely more attention than any I could offer. The accomplished and eloquent author of the eulogy, from which I read—the distinguished Horace Binney, declares :—“ These sentiments are worthy of the profoundest consideration. They were the last legacy of his political wisdom, from an incorruptible patriot, and one of the wisest of men. Standing as it were on the verge of life,

free from all mixture and stain of selfish motive, having nothing to hope, nothing to fear from men, they are the parting testimony of his pure and disciplined reason. They are worthy of being written on the tables of the heart; and if elsewhere they may be disregarded in the spirit of change, or in the lust of experiment, let them animate us to preserve what we have, and to transmit it to our children." Such is the character of the last counsel given to the assembled rulers of the land of his birth, his home, his affections; of the land, in which he was soon to close his long and useful life. And here are the words he uttered, "with the fervor and almost with the authority of an Apostle"—the words of CHIEF JUSTICE MARSHALL:—

"The argument of the gentleman (he said) goes to prove not only that there is no such thing as judicial independence, but that there ought to be no such thing:—that it is unwise and improvident to make the tenure of the judge's office to continue during good behaviour. I have grown old in the opinion that there is nothing more dear to Virginia, or ought to be more dear to her statesmen, and that the best interests of our country are secured by it. Advise, sir, to the duties of a judge. He has to pass between the government and the man whom that government is prosecuting,—between the most powerful individual in the community, and the poorest and most unpopular. It is of the last importance, that in the performance of these duties, he should observe the utmost fairness. Need I press the necessity of this? Does not every man feel that his own personal security, and the security of his property, depends upon that fairness. The judicial department comes home in its effects to every man's fire-side;—it passes on his property, his reputation, his life, his all. Is it not to the last degree important, that he should be rendered perfectly and completely independent, with nothing to control him but God and his conscience." "I acknowledge that in my judgment, the whole good which may grow out of this convention, be it what it may, will never compensate for the evil of changing *the judicial tenure of office.*" "I have always thought from my earliest youth till now, that the *greatest scourge an angry heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependant judiciary.*"

In the language of this venerated man, I unite most devoutly, in the prayer to a merciful God, to spare us from that "*greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people.*"











UNIVERSITY OF CALIFORNIA LIBRARY

Los Angeles

This book is DUE on the last date stamped below.

LD-URL  
NOV 18 1967  
OCT 30 1967

Stockton, Calif.

AA 000 556 137 8

PLEASE DO NOT REMOVE  
THIS BOOK CARD



University Research Library

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54  
IN L 30202

CALL  
NUMBER

3 3 5 2 A 4 1 1

SER  
VOL  
PT  
COP

AUTHOR



